

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2408 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JESHNIGHAI RAISINGBHAI GOHEL

Versus

STATE OF GUJARAT

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Appearance:

Mr A.J. Patel for MR PM BHATT for Petitioner

Mr A.G.Uraizee, AGP, for the respondents.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 15/03/96

ORAL JUDGEMENT

A short, but interesting question which has figured in this petition under Article 226/227 of the Constitution of India is, as to whether Assistant Collector is competent to pass order in a mutation proceedings popularly known as RTS proceedings recorded by Mamlatdar or a revenue authority by exercising revisional powers

under sub-rule (6) of Rule 108 of the Gujarat Land Revenue Rules, 1972 (Rules for short).

2. Before any answer is given to the aforesaid question which has come up for consideration, a short resume of facts may be articulated at this stage. The petitioner's father died leaving a Will in respect of six parcels of land in favour of 19 persons including the petitioner. Pursuant to the said Will, entry in the record of rights was mutated in village form No.6 at entry No.3568 on 18.8.81. The said entry came to be sanctioned and certified by the Mamlatdar, respondent No.2 on 9.10.91.

3. Respondent No.3, Assistant Collector, at Baroda in exercise of revisional powers under sub rule (6) of rule 108 of the Rules after hearing the parties cancelled the said entry by passing the impugned order on 10.2.95 in respect of 6 agricultural properties in RTS Revision No.53/94. The petitioner being aggrieved by the said order has questioned its legality and validity by filing this petition.

4. The first question raised by the learned Advocate for the petitioner is that the impugned order of the Assistant Collector is illegal and without jurisdiction as the Assistant Collector is not competent to hear the revision under sub-rule (6) of rule 108 of the Rules. Having regard to the facts and circumstances, this submission appears to be full of substance. Rule 108 of the Rules provided in Chapter XV deals with record of rights. Rule 104 to 113 are the provisions in Chapter XV relating to record of rights. Rule 108 is relevant. Therefore, it would be necessary to refer to the same in extenso. It reads as under :

"108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

- (4) Such officer shall certify the entry in the Diary of mutations to be correct.
- (5) An appeal against an order under this rule shall, if the order has been made by the Mamlatdar's First Karkun, the Mamlatdar, the District Inspector or Revenue Officer or lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer, or to an officer appointed by the State Government in this behalf, and if the order has been made by the Sub-Divisional Officer, the Superintendent of Land Records Officer of a rank not lower than that of a Deputy Collector, to the Collector; such appeal shall be presented within sixty days from the date on which the copy of the order was served on the appellant or was otherwise intimated to him:

Provided that the appellate authority may after recording its reasons in writing admit an appeal after the aforesaid period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within such period.

Subject to the provisions of sub-rule (6) the decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector. No second appeal shall lie in any case.

- (6) The Commissioner may call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of this rule for the purpose of satisfying himself as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings.

If, in any case, it shall appear to the Commissioner that any proceedings so called for or any decision or order made in such proceeding should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

- (7) If the appellate order or the order passed in revision by the Commissioner confirms the previous decision it shall be noted in the

remarks column against the entry which is confirmed. If it alters it, the change shall be entered as a fresh, but not disputable, mutation."

It can be very well be seen from the provisions of sub-rule (6) of rule 108 that the Government is entitled to call for and examine the record of inquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules (1) to (5) of rule 108 so as to satisfy himself as to the regularity, legality and propriety of any decision or order passed in such proceedings recorded in such cases. There is no dispute about the fact that the disputed mutation entry No.3568 was made under the provisions of rule 108. The expression 'Commissioner' in sub-rule (6) of rule 108 is required to be read as the Government about which there is no dispute. With the result, the power for revision is conferred on the Government under sub-rule (6) of rule 108. It is not the case of anybody that the power of the Government for review or revision has been delegated to some authority. Therefore, it becomes clear that the Assistant Commissioner is incompetent to entertain any revision under sub-rule (6) of rule 108 of the Rules. With the result, the impugned order passed by the Assistant Commissioner, Baroda on 10.2.95 cancelling the mutation entry No.3568 is illegal and void being without jurisdiction. Therefore, the petition is required to be allowed only on this ground. Other grounds are not required to be examined in greater detail at this stage. The learned Assistant Government Pleader, Mr Uraizee states that the appropriate authority will be entitled to take up the impugned entry in revision. Obviously, the decision rendered in this petition would not bar or constitute any hurdle or impediment in exercise of revisional power under sub-rule (6) of rules 108 of the Rules in future by the Competent Authority.

4. In the result, this petition is allowed with no order as to costs. The impugned order of the Assistant Collector dated 10.2.95 cancelling and revoking the mutation entry No.3568 in respect of six agricultural properties No.166, 167, 175, 200, 203 and 204 is quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.

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